

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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KEITH I. HURST,

Plaintiff,

-v-

9:16-CV-1062  
(DNH/TWD)

A. MOLLNOW, Correctional Officer,  
Washington Correctional Facility; and  
EISENSCHMIDT, Sergeant, Washington  
Correctional Facility,

Defendants.

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APPEARANCES:

OF COUNSEL:

KEITH I. HURST  
Plaintiff, pro se  
105 Hunter Avenue, #2  
Albany, NY 12206

BARBARA D. UNDERWOOD  
Attorney General for the State of New York  
Attorney for Defendants  
The Capitol  
Albany, NY 12224

MARK G. MITCHELL, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Pro se plaintiff Keith I. Hurst brought this civil rights action pursuant to 42 U.S.C. § 1983. On July 20, 2018, the Honorable Thérèse Wiley Dancks, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment

be granted in part and denied in part. No objections to the Report-Recommendation were filed.

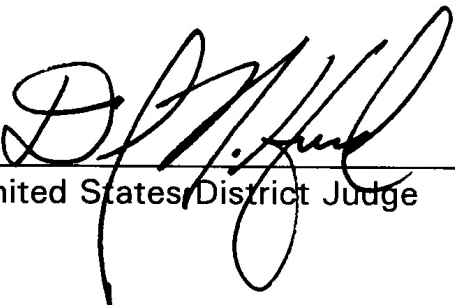
Based upon a careful review of the Report-Recommendation, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;
2. Defendants' motion for summary judgment dismissing plaintiff's Eighth Amendment excessive force claim against defendants in their official capacities is GRANTED and those claims are DISMISSED;
3. Defendants' motion for summary judgment dismissing plaintiff's Eighth Amendment excessive force claim based on non-exhaustion is DENIED without prejudice to defendants renewing this argument and requesting an exhaustion hearing; and
4. Trial is scheduled for February 5, 2019 in Utica, New York.

IT IS SO ORDERED.

  
United States District Judge

Dated: August 29, 2018  
Utica, New York.